

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SASHA MCGARITY,

Plaintiff,

Civil Action No. 19-CV-11316

vs.

HON. BERNARD A. FRIEDMAN

BIRMINGHAM PUBLIC SCHOOLS,

Defendant.

ORDER ACCEPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is presently before the Court on plaintiff’s motion for default judgment [docket entry 21]. Magistrate Judge Mona K. Majzoub has issued a report and recommendation (“R&R”) in which she recommends that this motion be denied. Plaintiff has filed timely objections to the R&R.

The magistrate judge correctly notes that plaintiff’s “motion for default final judgment” must be denied because plaintiff did not first obtain a clerk’s default. By the time plaintiff sought a clerk’s default in July 2019, defendant had already answered the complaint and therefore the clerk properly denied the requested clerk’s default. Plaintiff is correct that defendant’s answer was filed one day late (twenty-two days after defendant was served with process), but this does not change the fact that plaintiff must first obtain a clerk’s entry of default under Fed. R. Civ. P. 55(a) before seeking a default judgment under Fed. R. Civ. P. 55(b). Nor has plaintiff shown how she was prejudiced by the answer being filed one day late. Accordingly,

IT IS ORDERED that Magistrate Judge Majzoub's R&R is hereby accepted and adopted as the findings and conclusions of the Court.

IT IS FURTHER ORDERED that plaintiff's motion for default judgment is denied.

Dated: November 14, 2019
Detroit, Michigan

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE